

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MONICA COURTMAN,
Plaintiff,

No. C 12-3724 CRB

ORDER

v.

MIDLAND CREDIT MANAGEMENT,
INC.,
Defendant.

Now pending before the Court is Defendant's motion to dismiss. See Dkt. 6. Plaintiff's opposition states that she would like leave to file an amended complaint to address some of the issues raised by Defendant's motion. See Opp'n at 3 (dkt. 13).


A party may amend her complaint once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P. 15(a). Defendant has not answered the complaint; instead, it has filed a motion to dismiss. In the Ninth Circuit a motion to dismiss is not considered a "responsive" pleading. See Miles v. Dep't of Army, 881 F.2d 777, 781 (9th Cir. 1989). Thus, Plaintiff does not require leave of court to file a first amended complaint. See Rhoades v. Avon Products, Inc., 504 F.3d 1151, 1158 (9th Cir. 2007).

Plaintiff shall file her amended complaint within twenty days of this order. If the amended complaint is not filed by that date, the Court will take the motion to dismiss under

1 submission. If an amended complaint is filed, Defendant, if it wishes to challenge the
2 sufficiency of the amended complaint, will have to file a new motion to dismiss. The
3 September 7, 2012, hearing is VACATED.

4 **IT IS SO ORDERED.**

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7 Dated: August 28, 2012


CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California